

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

CASH KNOTT,
a/k/a JEFFERY FULLER

Defendant.

No. CR03-113MJP

ORDER DENYING
RECONSIDERATION OF
DEFENDANT'S MOTION

On July 3, 2004, Mr. Knott filed a Motion for Sentence Modification under Criminal Rule 35 with this Court, arguing that the U.S. Supreme Court's Decision in Blakely v. Washington made the sentence which this Court imposed on him on November 25, 2003 appealable. Mr. Knott asserted that the Court enhanced his sentence using facts that he explicitly did not admit in his plea agreement with the Government. (Dkt. No. 70). Mr. Knott had not challenged his sentence until the filing of the July 3, 2004 motion. The Court held a hearing on September 14, 2004 to consider whether or not Mr. Knott's Motion was a valid one. (Dkt. No. 76). In an Order issued on September 17, 2004, this Court denied the Rule 35 modification because Mr. Knott was not in compliance with the Rule's mandate that corrections to a sentence be made within seven days of the sentencing. Because Mr. Knott was proceeding *pro se*, the Court construed Mr. Knott's motion as one brought under 28 U.S.C. §2255, but also denied the §2255 motion because it decided that Blakely did not apply retroactively to cases where the sentence was final and not on appeal. (Dkt. No. 77). Late in the afternoon of September 17, 2004, Mr. Knott brought the briefs in the case of Schardt v. Payne, a case

1 then before the Ninth Circuit on the issue of whether or not Blakely applied retroactively, to this
2 Court's attention and asked this Court to incorporate Schardt's and the amicus' arguments into Mr.
3 Knott's own Blakely arguments. (Dkt. No. 78). However, this Court had already issued its decision
4 and had not had time to consider Mr. Knott's submission beforehand. Mr. Knott filed a Motion for
5 Reconsideration of the Court's decision.

6 On September 29, 2004, the Court held another hearing in this matter and decided to hold its
7 final ruling on Mr. Knott's Blakely issue in abeyance and to take the parties' submissions and
8 arguments under advisement until the Ninth Circuit decided the issue presented in the Schardt
9 (Dkt. No. 80). The Court also released Mr. Knott from custody while its decision was pending.

10 The Ninth Circuit issued the Schardt decision on July 5, 2005. In its opinion, the court of
11 appeals held that Blakely did not announce a new substantive rule of criminal procedure, nor did it
12 announce a new watershed procedural rule which must be applied retroactively. 414 F. 3d 1025,
13 1033-1036 (9th Cir. 2005). This is the same logic which this Court first applied in its original Order
14 on Mr. Knott's Rule 35 Motion. (Dkt. No. 77, at 4-5). For this reason, Mr. Knott's arguments
15 under Blakely must be denied. The Court hereby DENIES reconsideration of Mr. Knott's sentence.

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17 The Clerk of the Court shall direct a copy of this order be sent to all counsel of record.

18 Dated: October 22nd , 2005.

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21 Marsha J. Pechman
22 United States District Judge
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